

**Virginia Regulations for the Development of Solid Waste Management Plans
9VAC20-130-10 *et seq* – Amendment 2
Technical Advisory Committee Public Meeting January 25, 2006**

Facilitator: Frank Daniel

TAC Members & Facilitator (initials used in notes are in parentheses):

Frank Daniel--DEQ Facilitator

Bill Dennison--Southwest Virginia Solid Waste Management Association

Debbie Devine--Southeastern Public Service Authority & Hampton Roads Planning District

Jeff Smithberger--Solid Waste Association of North America

Rick Guidry--Virginia Waste Industries Association

Mike Benedetto--Virginia Recycling Markets Development Council—(Mike notified DEQ that he would be absent from the first meeting)

Paul Vaughan--Campaign Virginia

Roger Diedrich--Sierra Club of Virginia

Steve Yob--Virginia Municipal League

Larry Land--Virginia Association of Counties—absent

Allan Lassiter--DEQ Division of Environmental Enhancement; technical representative to TAC.

(Other names that appear in today's notes are the names of DEQ staff members that were present to answer questions raised by the TAC: Leslie Beckwith, Leslie Romanchik, Melissa Porterfield, Steve Coe, Dan Gwinner, and Allen Brockman)

Today's meeting notes:

Introductions were made by Frank Daniel. Frank stated that this is an opportunity for the TAC members to contribute their thoughts to the Solid Waste Planning staff. Frank informed the TAC that Dept. staff & Board are not obligated in any way to incorporate the comments of TAC members into the final regulation, nor, by contrast, is the Virginia Waste Management Board (Board) automatically obligated to accept DEQ staff

recommendations. Board has the right by law to make the final decision on regulation contents.

On items for which consensus is reached during these 3 TAC meetings, information on this consensus will be provided to the Board at its regular Board meeting, the TAC members will not be providing additional comments on items at that time where consensus has been reached. For items on which consensus has not been reached, the procedure for comment to the Board is indicated in the TAC guidelines that have been provided to all the members. Frank asked the TAC members: “Do you want to review the minutes before they are posted before the public? If so, Allen Brockman needs to email the notes to the TAC within 10 days before the notes go to the public.”

At that time, the TAC voted that Allen Brockman obtain their approval before the minutes are to be presented to the public. Allen Brockman is to give the TAC members several days notice before the approval deadline.

Melissa Porterfield joined the discussion at this point to talk about the status of HB 647 & SB 57. The two bills have now been conformed to the same language. Both have passed the legislative houses in which they were introduced and have crossed over to be considered by the other house (Senate/House). The conformed bill changes the recycling rate (under certain economic conditions, for certain counties/cities the rate is reduced to a minimum 15% recycling rate, but when such conditions are not met, it the rate will remain at 25%).

At this point, Frank moved on to other business before the TAC. He asked the TAC if they would like to provide an “open chair” opportunity for oral comment to the public attendees at announced breaks the TAC’s discussion. No one on the TAC expressed opposition to the proposal for an open chair, and Frank confirmed the TAC’s acceptance of the open chair policy.

Next, Frank explained DEQ’s commitment to consensus building in these TAC meetings. DEQ’s goal is for TAC to reach consensus (as explained in the TAC guidelines). To accomplish consensus, TAC members have to agree to openly listen to others on the TAC 75% of the time and to keep a positive and conscientious attitude before the group. Consensus by nature means that each of us will have to give up something and can live with the group’s position taken in the consensus.

At this point, Allen Brockman gave a short summary of the regulations writing process. Allen explained that a proposed regulation will need to be presented to the Board by May 4 to meet the requirements of the Governor’s executive order. The steps in the regulatory process can be found at the following DEQ weblink:
<http://www.deq.virginia.gov/public/apa.html>

At the end of Allen’s presentation, Frank said our next step was to list topics for discussion in order of importance. Frank started the discussion by asking members of the

TAC committee to introduce themselves. Next, the Public attendees introduced themselves.

Frank Daniel asked TAC to contact friends on the TAC or Allen Brockman for an update, if they miss a meeting—to ensure that they keep current. For this first meeting, please contact Allen’s supervisor, Leslie Beckwith, at (804) 698-4123. At this point, the TAC began its Brainstorming Session:

Steve Yob brought forth an item from the NOIRA for discussion—the elimination of redundancy on Solid Waste Information reporting (SWIA) between this and the Virginia Solid Waste Management Regulation (VSWMR—9 VAC 20-80-115). Steve noted that there are difficulties in gathering adequate data required by the regulation (collection of waste generation data).

Debra Devine brought forth the definition of recycling as an item of discussion—the TAC needs to discuss what recycling is and is not (definition).

Roger Diedrich wants the TAC to discuss how DEQ calculates/measures the recycling rates

Jeff Smithberger asked for a discussion of Costs/Benefits to the communities involved in tracking down the info for the planning regulations (during the collection of data). Also, Jeff is concerned that Permit By Rule (PBR) facilities ought to be counted as part of the plan required by the planning regulation (he said this issue needs clarification)

Bill Dennison elaborated on Jeff’s comment on PBR’s. Bill said that HB 421 concerns this subject.

Allan Lassiter recommended that the official name of 9 VAC 20-130 should be changed to include “and recycling.” Allan stated that the TAC’s goal is to incorporate the elements of HB 647 into 9 VAC 20-130.

Jeff Smithberger asked how the timing will be resolved between the enactments of 9 VAC 20-130 (revised) and HB 647.

Allan Lassiter recommended that the TAC assume HB 647 will become law and that DEQ should work the elements into the revised regulation 9 VAC 20-130.

Rick Guidry said that the TAC should discuss what counts as recycling. Also, Rick stated that the PBR issue raised by Jeff Smithberger is an important issue to discuss.

Steve Yob asked that the TAC discuss the complications created when waste management facilities located outside one’s plan area need to be used. Steve stated that the TAC needs to touch on the proprietary nature of these plans, as divided among non plan jurisdictions—i.e. who has propriety over a facility and interjurisdictional conflict.

Roger Diedrich added that there also may be issues across state lines. Roger also wants the TAC to discuss enforcement in this regulation.

Allan Lassiter added that the TAC needs to discuss the nexus between recycling rates, plan approval, and permits. Steve Yob added that the “nexus issue” should involve the discussion of “unfunded mandates” and requirements for information the localities may not be able to collect. Also Steve Yob said he is interested in what is and is not recycling (CDD waste for example). Bill Dennison requested that paper copies of 9 VAC 20-130 be distributed to meeting participants. At this point Leslie Beckwith circulated these paper copies. Allen Brockman agreed to email the weblink for the existing regulations (to TAC members and public attendees—these have been added in the next paragraph below).

The following three weblinks, in order, are for: 1. The Solid Waste Management Planning Regulations (for which today’s TAC is advising DEQ on the current regulation revision); 2. The Virginia Solid Waste Management Regulations (VSWMR) and, in particular 3. the Solid Waste Inventory Assessment section of the VSWMR (weblinks 2 & 3 are *not* the subject of our current regulation revision, but are merely provided for reference): 1). <http://www.deq.virginia.gov/waste/wastereg130.html> and 2). <http://www.deq.virginia.gov/waste/wastereg80.html> and 3). <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC20-80-115>

Allan Lassiter said the TAC needs to define “market conditions” for exemption/variance (found in the statute and the regulation). Also, Allan Lassiter said the TAC needs to discuss recycling action plan requirements (8 have been approved in Virginia)—including required content and steps for approval.

Debra Devine said the TAC needs a tally of how many planning units, that aren’t currently meeting the 25% rate, will meet the proposed 15% rate under the economic issues requirement.

At this point, Frank Daniel focused the discussion toward priorities on the list (and any compaction of the items discussed above). The TAC assigned the following priorities (1 as highest; based on what appeared to be the easiest items on which to reach consensus). After the break, Allen Brockman requested that items 13 & 14 be added.

1. “Recycling” in the name of the regulation
2. Eliminate SWIA redundancy
3. Data Collection/Definition of Recycling/Recycling rate measurement & calculation)
4. Cost/Benefit
5. PBR
6. HB 647
7. Interjurisdictional Conflict
8. Enforcement

9. Nexus between recycling rates, planning, and permits
10. Market Conditions
11. Recycling Action Plans
12. Reporting as a unit for plans vs. recycling rate reports
13. Amendments (9 VAC 20-130-175)—5 or 10 year compilations? Waste hierarchy basis for minor or major amendments?
14. Variances (9 VAC 20-130-230)

Next the TAC went into further discussion of each item.

Item 1—“Recycling”

Allan Lassiter moved that the regulation’s name be changed to “Solid Waste Management Planning and Recycling Regulations.” The entire TAC agreed.

Item 2—Eliminate Solid Waste Information and Assessment Program (SWIA) redundancy. Steve Yob explained that the NOIRA suggested striking the entire section 165 from the planning reg. He said SWIA is already incorporated in the VSWMR at 9 VAC 20-80-115. Steve Yob proposed that we eliminate the redundant sections from 9 VAC 20-130 and 9 VAC 20-80. Debra Devine and Jeff Smithberger agreed that they would need to read the regulations (9 VAC 130 vs. 9 VAC 80) to see if they could concur with Steve Yob’s proposal. Leslie Beckwith handed out paper copies of 9 VAC 20-130 and 9 VAC 20-80-115. Steve Yob said we could either eliminate or cross reference the sections. The TAC seemed to agree, but discussion can be renewed at TAC meeting 2 once every one has had the opportunity to review the affected sections.

Item 3—Steve explained the Data collection problem. The localities don’t have control of the waste generation data from the companies. It will be difficult to make the companies provide the waste generation data. Debra Devine agreed that it will be difficult, however, the way the data is collected, there is a caveat as to waste generation data accuracy due to what is involved in the estimation. Debra would like to do a more accurate accounting of waste generation to avoid the negatives of inaccurate current estimates. Debra said this is very frustrating to have to live and die by the waste generation numbers they have to estimate. Steve Yob said it would be a management problem to enforce the collection of more accurate numbers. Allan Lassiter agreed that such management problems would arise by striving for more accurate numbers. Jeff Smithberger said the regulation should require the companies to report the data to the solid waste planning units—but he agreed that it is frustrating to enforce such data collection. Jeff would like to see some data collection friendly language that would encourage better enforcement of waste generation numbers. Roger Diedrich questioned how the Federal Government is able to collect such data, if the localities are not able to do it. Jeff Smithberger suggested a carrot/stick approach to make it more attractive for companies to provide accurate waste generation data. Allan Lassiter asked if there is an issue with the yearly collection of Recycling Rate Report data or if it is more of an issue

with the 20 year waste plan effort. Debra Devine noted that one entity in her area gave conflicting data

reports on recycling (0 vs. a six figure amount). Rick Guidry pointed out that a great deal of logistics are required to compile the waste generation data and that it may be beyond the abilities of some localities to collect this information. Jeff Smithberger said item 3 presents a genuine problem, but he doesn't know that we can fix it in this regulation—but he and Debra Devine agreed that it should be brought out on paper that the waste generation is a “best guess” rather than an accurate number. Bill Dennison asked if the various TAC members are in effect implying that regulation should try to direct a private entity to provide the waste generation data—Debra Devine said no, they are trying to provide language qualifying the quality of the waste generation number. Steve Yob suggested adding the words “under the planning unit’s control” for the waste generation numbers (that would be exclusive of the waste generation numbers otherwise available from the companies in the locality). In conclusion, Frank Daniel asked Debra Devine to come back with some proposed language on Part A of Item 3 for TAC meeting #2 on February 8.

Next, Frank moved to part B of Item 3--the clarification of the recycling definition. Roger Diedrich proposed that the regulation ensure consistency in definitions with elsewhere in the U.S. Allan Lassiter suggested that it may be difficult to clarify the definition of recycling beyond what can be identified in HB 647. Allan suggested that we walk thru this definition at the next meeting. Debra Devine concurred with Allan’s suggestion. Allan Lassiter also spoke on the differences he saw between recycling and reuse. Debra Devine asked if HB 647 leads to a “diversion rate” rather than a “recycling rate.” Debra Devine noted that NC and MD probably have already gone through this discussion, so she suggested that we discuss this in VA as well. Steve Yob asked Allan Lassiter to include best practices on this issue that have been identified from around the U.S., and Allan agreed. Allan will also talk about the EPA model for recycling. Debra Devine said her group is interested in a more thorough understanding of how to incorporate waste to energy into this recycling discussion. Jeff Smithberger had a question about HB 647. Jeff requested to see a map of which planning units would meet the economic conditions required to meet the 15% rate. Bill Dennison said it was available from the Census. At this point, various members of the TAC went into a discussion of the statistics related to HB 647 and planning units that will meet the new recycling rates.

There are 74 solid waste plans but 94 recycling reporting units in Virginia according to Dan Gwinner and Allan Lassiter. Bill Dennison said this discrepancy is addressed and and in effect corrected in HB 647. Steve Yob noted that this discrepancy probably had something to do with the Rivanna Authority’s comment in the NOIRA (from the NOIRA comments presented to all TAC members in advance of today’s meeting).

At this point, Frank Daniel invited anyone from the general public to take advantage of the “open chair.” A public representative from the New River area came forward and said he would have a presentation at the next TAC meeting to discuss some of the issues brought up so far in Item 3.

At this point the TAC adjourned for a brief break period (approximately 3 pm)

After the break, Frank Daniel reinitiated the discuss by announcing that Allen Brockman had requested the addition of two items to the brainstorming list for discussion— Amendments (9 VAC 130-175) and Variances (9 VAC 130-230), and Mr. Brockman emphasized that a decision needs to be made as to whether the Recycling Action Plan formally needs to be incorporated in the regulations.

The TAC agreed to postpone discussion of Item 3 C-- Recycling rate measurement & calculation—until after Allan Lassiter makes a presentation on the subject at the Feb. 8 meeting.

At this point, the TAC moved on to discuss Item 4--Cost Benefit Considerations—Jeff Smithberger emphasized that these need to be thought about all through the discussion. It was agreed and the group moved on to Item 5.

Item 5—Permits by Rule (PBR's)—Jeff Smithberger stated that DEQ's position has been that PBR's don't count in the solid waste management plans (i.e. in terms of whether the PBR's have to be represented in the plan before they are approved). Leslie Romanchik responded that the former DEQ Director agreed DEQ would look further into the issue. Romanchik said PBR's were written into the regulation to streamline the regulatory process. Jeff Smithberger agreed that PBR's were intended to be a streamline process for permit reasons, but that they should still be scrutinized in a different sense during the planning process. Leslie Romanchik said local government approval is required for PBRs, and that maybe that is the appropriate nexus for PBRs and waste planning. Jeff Smithberger stated that the local government approval for PBRs is limited to zoning concerns--not to waste planning concerns. Frank Daniel asked Jeff if the proposed statutory language (Bulova Bill HB 421) passes in this year's legislature, then, whether this would solve his concern. Jeff said yes, passage would accomplish his purpose.

However, a number of TAC members pointed out that the PBR position reduces to a determination that only landfills have a bearing on waste planning. Frank asked various members whether solid waste plans or zoning concerns are more restrictive towards Waste PBRs. A number of members stated that solid waste plans are more restrictive towards Waste PBRs.

Bill Dennison said that he believes the language in the regulations can be strengthened to address PBRs and waste plans, whether HB 421 passes or not. Bill said that he feels PBRs should be subject to planning under the solid waste plans.

Leslie Romanchik said the issue is not whether PBRs should be subject to solid waste plans—they are subject to solid waste plans. However, under the current regulatory procedure, DEQ does not have to seek approval by the localities (i.e. will the PBR be consistent with the solid waste plan) before a PBR can be granted. In the end, Leslie, Bill, and Jeff agreed that the PBR issue needs to be looked at. Rick Guidry said he disagrees that the PBR issue should be changed in the regulations—he doesn't see a problem with the existing procedure. Debra Devine said that planning units are impacted monetarily by nonwaste plan PBRs that come into their area (application of fees to their member communities).

Jeff Smithberger emphasized that the planning unit has to update their plans to include nonwaste plan PBRs. Steve Yob said PBRs should be treated the same way as permits in solid waste plans. Frank Daniel asked how the PBR problem could be fixed. Jeff Smithberger agreed to bring some proposed language to the 2nd TAC on this subject.

Roger Diedrich asked if we could use the plan to restrict PBRs from the planning unit. Both Jeff Smithberger and Roger Diedrich emphasized to Frank Daniel that waste planning concerns such as PBRs are not restricted from a planning unit by the Locality's Comprehensive Plan—that just applies to zoning concerns. The solid waste plan is the document that governs activities covered by PBRs etc.

Next the TAC moved on to discuss Item 6—HB 647. Steve Yob recommended that the TAC table this discussion until later (until after Allan Lassiter's rate calculations presentation on February 8).

Next the TAC moved on to discuss Item 7—Interjurisdictional Conflicts (Steve Yob explained that these are conflicts between plans addressing the same or impacting the same resources). Rick Guidry said that there were open sections in the VSWMR where DEQ could address such concerns. Leslie Romanchik agreed. Frank Daniel asked if others see this as a big issue for the TAC to address. Roger Diedrich said the TAC should think about item 7 as an issue impacting the future. Steve Yob agreed to pursue some research on Item 7 and to report back to TAC meeting 2. Rick Guidry also agreed to look into Item 7.

At this point the TAC moved on to discuss Item 8—Enforcement. Roger Diedrich explained his issue as: if the jurisdictions aren't meeting their plans or aren't implementing them—how does DEQ encourage the jurisdictions to plan. Allan Lassiter asked the TAC if they thought such jurisdictions should be penalized under these circumstances. Then Allan asked what government entity should enforce the cash penalties. Frank Daniel said DEQ can enforce such administrative penalties by consent. At this point, the TAC group then explored other enforcement options available and the elements of HB 647. Next the TAC group explored potential incentives (grants) that could have been explored at the statutory level. Steve Yob asked where resources should be expended to get the most results. Roger Diedrich suggested that the TAC look to a State Plan if DEQ is to look into an incentive program. Debra Devine agreed that DEQ probably can't solve these problems in this regulation. The majority of the TAC group expressed that incentives, compliance assistance and grants would be the most effective way to bring about positive change in waste planning and recycling rates. Steve Yob notes that VML is opposed to taxes on landfills to encourage recycling. Bill Dennison pointed out that past taxes on landfills have been for non solid waste, recycling, or planning purposes. Allan Lassiter said a Commonwealth's Attorney could pursue such actions to fine localities for plan problems, just like they do with tire pile sites. This item may require further discussion before consensus is reached.

The TAC then moved on to Item 9, the nexus between recycling rates, planning and permits; Bill Dennison said we should hold off on this until TAC 2 after Allan Lassiter's presentation.

At this point the TAC moved on to Item 10—Definition of Market Conditions, which had been raised by Allan Lassiter. Allan also stated that this issue will impact "variances." Steve Coe has been working on this definition. Steve Coe will present the specifics at TAC meeting 2. The barriers are transportation distance and quality of materials separated. Allen Brockman said this point impacts what kind of variances we can issue. Allan Lassiter said we should address this issue. Steve Coe shared some particulars of his research into how a variance related to poor market conditions should work (or not work). Frank Daniel suggested that all presentations to the group before the next TAC meeting. Allan Lassiter said he would work on a framework for approving a variance for market conditions for review by the group.

Next, the TAC addressed Item 11—Recycling Action Plans (RAPs), another issue raised by Allan Lassiter, and given further emphasis as an important issue by Allen Brockman. Allan Lassiter described the "Recycling Action Plan" as a strong document and that represented a firm commitment on part of the locality. The RAP is DEQ's response to solid waste plans that are deficient in the recycling component. Jeff Smithberger said he would like to see an example. Allan Lassiter stated that eight planning units have had their RAPs approved. Dan Gwinner said 15 or so additional planning units will require RAPs to achieve approved plans. Jeff Smithberger said he can understand the RAP alternative in the previous regulatory framework. Allan Lassiter said the approval of a RAP is required to reach an approved solid waste management plan. Allan Lassiter said

the RAPs submitted so far cover a 2-year time frame. He further state that DEQ has not set a specific time period. Jeff Smithberger asked what happened if the

planning unit didn't meet the 2-year time frame. Allan Lassiter said the planning unit is then brought in for enforcement action. Jeff Smithberger pointed out that under the new statute (HB 647)—the same planning units will now be applying for amended RAPs. Jeff Smithberger agreed that there is a continued need for RAPs under the new statutory framework and that the DEQ staff should generate the appropriate language in the regulation. However, Jeff Smithberger suggested that we look into what type of enforcement issue or penalty should be incurred if a planning unit doesn't meet their RAP. Allan Lassiter agreed that the RAP provision needs to be incorporated into the regulation. Allan Lassiter pointed out that the RAPs give more definition to the required process recycling in each case. Leslie Romanchik pointed out that if a RAP fails, it could indicate that the locality is a good candidate for a variance under poor market conditions.

Frank Daniel pointed out that DEQ never wants to prescribe the exact enforcement outcome in the regulations—DEQ has to leave that open on a case by case basis. Roger Diedrich acknowledged this, but he said that the RAP will force the localities to think about the planning and recycling process and take a strong look at how to plan better. Frank asked Allan Lassiter what outcome he looks for in Item 11. Allan Lassiter said he wants the TAC group to review the RAP concept and then to advise whether the RAP procedure should be incorporated into the revised regulations.

Frank said Allan Lassiter is the first on the agenda for TAC meeting 2. Then we will work through the remaining items.

Items to be addressed in TAC meeting 2 or 3:

Item 12—Reporting as a unit for plans vs. recycling rate reports

Item 13—Amendments (9 VAC 20-130-175)—5 or 10 year compilations? Waste hierarchy basis for minor or major amendments?

Item 14—Variances (9 VAC 20-130-230)

End of Minutes for TAC meeting 1.

Persons attending this meeting as members of the public:

Dori Brown—City of Newport News Public Works
Christina Chubb—Spotts Fain Consulting
Ron DiFrancesco—Golder Associates
Fred Hilliard—New River Resource Authority
Dan Gwinner—DEQ
Leslie Romanchik—DEQ
Leslie Beckwith—DEQ
Georgiana Ball—DGS

